

SAMVAAD 2024

THE YEAR IN REVIEW

THE OFFICIAL NEWSLETTER OF CCADR FOR
ARBITRATION LAW UPDATES

ABOUT CCADR

The Chanakya Centre for Alternative Dispute Resolution (CCADR) was established at Chanakya National Law University, Patna, in the year 2021, with the objective to promote academic research on themes pertaining to the resolution of disputes. Alternative Dispute Resolution is a new and emerging interdisciplinary field that is concerned with, inter-alia, the following themes: (a) the study of the causative structural factors and the subjective motives of the actors giving rise to disputes; (b) the study of the formal and informal institutions dedicated to the resolution of disputes; and (c) the study of the laws and regulations to produce fair outcomes of disputes.



Modifying an arbitral award is not allowed under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 [*S.V. Samudram vs. State of Karnataka*, 2024 INSC 17]

The Supreme Court has stated that arbitral awards cannot be modified in proceedings initiated under Sections 34/37 of the Arbitration and Conciliation Act, 1996, reasserting the case of *National Highways Authority of India v. M. Hakeem and Another* [3 (2021) 9 SCC 1], it was emphasised that courts do not have the jurisdiction to modify arbitral awards, even if they conflict with the grounds specified under Section 34. The findings of the arbitrator are generally considered binding unless set aside on specific grounds.

Under Section 34(3) of the Arbitration and Conciliation Act, the limitation period of 3 months plus 30 days is unyielding and rigid [*Union of India vs. M/s Panacea Biotec Limited*, 2023: DHC: 9474- DB]

The Delhi High Court reiterated that under Section 34(3) of the Arbitration and Conciliation Act, 1996, the limitation period of 3 months plus a grace period of 30 days is strict and inflexible. The Court explained that a challenge petition must be filed within this period, and any delay beyond this cannot be condoned. The Court emphasised that the filing or re-filing of petitions must occur within the stipulated period, and any petitions filed after this timeframe are deemed time-barred.

Limitation Act applies to proceedings for the appointment of arbitrators under Section 11(6) [*M/s Arif Azim Co. Ltd. vs. M/s Aptech Ltd.*, 2024 INSC 155]

The Supreme Court held that the Limitation Act, 1963, applies to the appointment of arbitrators under Section 11(6) of the Arbitration and Conciliation Act, 1996. Courts may refuse to appoint an arbitral tribunal if the claims are ex-facie time-barred. The Court emphasised a two-prong test to determine whether a petition under Section 11(6) is barred by limitation and whether the claims are ex-facie dead (evidently expired) and barred by limitation (not within the allowed time) on the date of commencement of arbitration proceedings.

Additionally, the Court urged the legislature to amend the Act to prescribe a specific period for filing such applications, as the current period of three years is deemed unduly long and against the spirit of the Act, which aims for expeditious resolution of commercial disputes.

Section 11 Petition Requires 30-Day Notice Period [*Information TV Private Limited vs. Jitendra Dabhyabhai Patel*, 2024: DHC: 927]

The Delhi High Court ruled that a petition under Section 11 of the Arbitration and Conciliation Act, 1996, can only be filed after the issuance of a notice of arbitration and the failure to appoint an arbitrator within 30 days. The limitation period begins upon the failure to make the appointment within this timeframe. The court affirmed that such petitions are covered by Article 137 (residual provision) of the Limitation Act, 1963.

Bias allegations cannot be raised once the award has been rendered as per Section 31 [*Allied-Dynamic Joint Venture vs. Ircon International Ltd*, 2024: DHC: 239]

The Delhi High Court held that objections regarding bias against an arbitrator, as per Section 12(5) of the Arbitration and Conciliation Act, 1996, cannot be raised after the arbitrator has rendered a decision under Section 31. Once an award is made, raising bias allegations amounts to a waiver under Section 4, which stipulates that a party that fails to promptly raise any objections they are aware of within a reasonable time is considered to have waived their right to object.

Proceedings Under IBC Don't Exclude Court Jurisdiction To Entertain Section 11 A&C Applications [Godavari Projects (J.V) vs. Union of India, 2024: DHC: 1787]

The Delhi High Court held that proceedings under Section 14 of the Insolvency and Bankruptcy Code, which imposes a moratorium on legal proceedings against the corporate debtor during insolvency, do not expressly exclude the jurisdiction of the court or authorities to entertain applications under Section 11(6) of the Arbitration Act or other proceedings initiated by the corporate debtor against another party. The court clarified that even if a Joint Venture is undergoing insolvency, this does not preclude the corporate debtor from filing an application under Section 11 for the appointment of an arbitrator by the court.

Foreign Arbitral Awards must adhere to International Standards on Bias rather than domestic standards [Avitel Post Studios Limited & Ors. vs. HSBC PI Holdings (Mauritius) Limited, 2020 SCC OnLine SC 656]

The Supreme Court ruled that the enforcement of foreign arbitral awards should rarely be refused and must adhere to international standards to determine bias rather than domestic standards. The Court emphasised the need to adopt internationally recognised narrow standards of public policy. It stressed that challenges based on arbitral bias at the enforcement stage should be discouraged unless there is a clear violation of morality and justice.

Arbitration Clause Remains Valid Despite Award Being Set Aside for Non-Compliance with Section 12 [Aakash Educational Services Ltd vs. M/S Lotus Education & Ors., 2024: DHC: 1449]

The Delhi High Court held that an arbitration clause remains valid even if an arbitral award is set aside due to non-compliance with Section 12 of the Arbitration Act, which deals with the grounds for challenging the appointment of an arbitrator. However, the Court also clarified that the invalidation or unenforceability of the arbitrator appointment process under Section 12 does not void the entire arbitration clause. Therefore, the parties can file a fresh application under Section 11 of the Arbitration Act, which allows for the appointment of arbitrators by the court.

Fresh Notice Under Section 21 Not Required After Setting Aside of Award [Kirloskar Pneumatic Company vs. Kataria Sales Corporation, MANU/MH/2078/2024]

The Hon'ble Bombay High Court held that when arbitration proceedings have already been initiated and the arbitral award has been set aside under Section 34 of the Arbitration and Conciliation Act, 1996, it is not mandatory to issue a fresh notice under Section 21 before seeking the appointment of a new arbitrator under Section 11. The Court clarified that since arbitration had already been invoked in the previous proceedings, a fresh invocation is unnecessary for reconstitution of the tribunal.

Place of Arbitration Deemed as Seat in Absence of Seat Clause [Anju Jain vs. M/s WTC Noida Development Company Pvt Ltd., MANU/DE/266/2024]

The Delhi High Court, in the present case has held that in the absence of a specific seat clause in the agreement, the place of arbitration would be considered the seat of arbitration. Relying on *Cinepolis India Pvt. Ltd. vs. Celebration City Projects Pvt. Ltd.* [MANU/DE/0209/2020] and *Yash Deep Builders LLP vs. Sushil Kumar Singh* [MANU/DE/1688/2024], the Court clarified that in case of conflict between an exclusive jurisdiction clause and the place of arbitration, the latter shall be treated as the “seat” of arbitration.

Court Cannot Overturn Arbitral Tribunal's Interpretation of Contract [*National Highway Authority of India vs. M/s Hindustan Construction Company Ltd.*, MANU/]

The Supreme Court of India, in a civil appeal by the National Highway Authority of India, reaffirmed that a court cannot overturn the interpretation of a contract rendered by an arbitral tribunal under Section 34. The appeal concerned two claims—one regarding increased costs due to subsequent legislation and another for the balance payment for embankment construction. For the second claim, the Court upheld the arbitral tribunal's view, which was also approved by Section 34 and 37 courts. Finding no perversity or illegality, the Supreme Court refused to interfere with the award.

General Jurisdiction Clause Does Not Determine Arbitration Seat [*M/s Kings Chariot vs. Mr. Tarun Wadhwa*, ARB.P. 421/2024]

The Delhi High Court held that a general jurisdictional clause in a contract, which does not expressly refer to the seat or venue of arbitration, cannot be construed as designating the arbitration seat. In a case where the arbitration clause did not specify a seat or venue and no part of the cause of action arose within its jurisdiction, the Court ruled that a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, would not be maintainable before it. The Court emphasized that, in the absence of a designated seat, jurisdiction must be determined based on the cause of action.

Distinction Between Reference and Incorporation of Arbitration Clause [*NBCC Limited vs. Zillion InfraProjects*, 2024 SCC Online SC 323]

The Supreme Court of India distinguished between the "reference" and "incorporation" of an arbitration clause in a contract. It held that a general reference to another contract does not automatically incorporate its arbitration clause into the main contract unless there is a specific reference to the arbitration clause itself. The Court clarified that only the terms related to execution or performance are incorporated when a contract refers to another. However, exceptions exist where a contract adopts the standard terms of an independent trade body or a contracting party, in which case the arbitration clause is deemed incorporated. The Court classified such cases as 'single-contract' cases, differing from 'two-contract' cases where explicit reference to arbitration is required.

Receipt of Notice Under Section 21 is Mandatory for Arbitration Commencement [*Indian Spinal Injuries Centre vs. Galaxy India*, 2024 SCC OnLine Del 4385]

In *Indian Spinal Injuries Centre v. Galaxy India*, 2024 SCC OnLine Del 4385, the Delhi High Court held that merely sending a notice under Section 21 of the Arbitration and Conciliation Act, 1996, does not suffice for initiating arbitration proceedings. The Court emphasized that receipt of the notice by the respondent is a prerequisite for the commencement of arbitration. Dismissing the petition under Section 11(6) for the appointment of an arbitrator, the Court clarified that proper service of notice is essential to invoke arbitration.

High Court Without Original Civil Jurisdiction Cannot Extend Time Under Section 29A(4) [*Chief Engineer (NH) PWD (Roads) vs. M/s BSC & C*, MANU/MG/03/2024]

The Supreme Court held that a High Court lacking original civil jurisdiction cannot extend the time limit for passing an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996. The bench of Justices Abhay S Oka and Ujjal Bhuyan clarified that the power to grant such an extension rest with the principal Civil Court of original jurisdiction. However, a High Court exercising ordinary original civil jurisdiction is competent to extend the time limit.

Interest Award is at Arbitrator's Discretion, Not a Right [*M/S Space 4 Business Solution Pvt Ltd vs. The Divisional Commissioner Principal Secretary*, ARB.P. 360/2024]

The Delhi High Court held that awarding interest is solely at the discretion of the arbitrator and cannot be claimed as a matter of right. Justice Neena Bansal Krishna emphasized that the arbitrator has absolute discretion in deciding whether to grant or refuse interest on the principal amount, and parties cannot demand it as an entitlement.

The court can award interest only on the principal amount, not on interest, under the Arbitration Act 1940 and Section 3 of the Interest Act 1978 [*D. Khosla & Company vs. Union of India*, 2024 INSC 587]

The Court emphasized that the terms of the award did not permit the inclusion of prior interest in the principal for calculating subsequent interest. It cited several legal provisions, including Section 29 of the Arbitration Act, which allows interest on the principal sum but not on interest accrued, and Section 34 of the Code of Civil Procedure, which similarly restricts interest to the principal amount. The Court concluded that, in the absence of any provision in the relevant statutes or award or the contract, permitting the arbitrator or the court to award interest upon interest, the same could not be granted.

The arbitrator can award pre-reference and pendente lite interest unless the agreement explicitly prohibits it [*Pam Developments Pvt. Ltd. vs. State of West Bengal & Anr*, MANU/SC/0905/2019]

The Supreme Court observed that the power of the Arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The Court noted that the power of the Arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded or does not contain a specific term that prohibits the same. It was held that the HC had no reason to interfere with the Arbitral Award with respect to grant of pre-reference interest since the Contract between parties does not prohibit the same.

Unless there is Patent Illegality in Arbitral Tribunal's Appreciation of Evidence, the Court of Appeal's Interference is unwarranted [*Union of India vs. Parishudh Machines (P) Ltd.*, MANU/DE/9053/2024]

The High Court upheld the arbitral award, finding it comprehensive, well-reasoned, and free from patent illegality or procedural defects. It ruled that courts cannot re-evaluate evidence or merits under Section 34 of the Arbitration and Conciliation Act. Since the arbitral tribunal's view was plausible, there were no grounds for interference, reaffirming the finality of arbitration as a dispute resolution mechanism.

An application for an extension of the time period for passing an arbitral award under Section 29A (4) read with Section 29A (5) of the Act is maintainable [*Roban Builders (India) Private Limited vs. Berger Paints India Limited*, 2024 SCC OnLine SC 2494]

The Supreme Court of India held that an application for an extension of the time period for passing an arbitral award under Section 29A (4) read with Section 29A (5) of the Act is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be. That the expression “either prior to or after the expiry of the period so specified” in Section 29A (4) of the Act is unambiguous. It can be deduced by the language of the Act that the court can extend the time for filing of the application after the expiry of the period under sub-section (1), or the extended period in terms of sub-section (3). Thus, the Court has the power to extend the period for making an award at any time before or after the mandated period.

There should be substantial involvement for a non-signatory to be bound by an arbitration agreement: Supreme Court of India [*Ajay Madhusudan Patel vs. Jyotrindra S. Patel*, 2024 SCC OnLine SC 2597]

The court underscored that the intention of parties to be bound by an arbitration agreement could be inferred from their conduct during negotiations and performance. If a non-signatory's actions align with those of signatories, it may lead others to reasonably believe that the non-signatory is a veritable party to the contract. However, incidental involvement would not suffice; substantial engagement is required. Additionally, the SRG Group contended that two conditions must be met for it to be compelled into arbitration: (1) it must have agreed to the underlying contract, and (2) it must have consented to be bound by the arbitration agreement. The Supreme Court acknowledged that this necessitates a detailed examination of evidence, which falls within the purview of the arbitral tribunal.

The limitation under Section 34(3) starts from the tribunal's disposal of the Section 33 application, independent of the applicant [*Prime Interglobe Private Limited vs. Super Milk Products Private Limited*, 2024 SCC OnLine Del 6365]

The Court held that the benefit of reckoning the terminus ad quem of limitation, for filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the “Act”) from the date on which Section 33 application is disposed of by the tribunal, as envisaged in Section 34 (3), is not made statutorily dependent on the party who has filed the Section 34 application. Accordingly, it was held that irrespective of the sub-section of Section 33 under which the application was moved before the arbitral tribunal, a Section 34 petition, by either party, can be filed within three months of which the Section 33 application is disposed of.

The arbitral tribunal's awarded sum must include post-award interest [*R.P. Garg vs. The Chief General Manager, Telecom Department & Ors.*, 2024 INSC 743]

The Supreme Court (“SC”) held that it is the first principle under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 (“the Act”) that any sum directed to be paid by the arbitral award must carry a post-award interest which may be stipulated by the arbitrator or it shall be decided by statutory limits and the interest rate granted under the Award is to be given precedence over the statutorily prescribed limit. The SC while citing *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.* [(2023) 1 SCC 602], held that it is a clear position of law that granting post-award interest is not subject to the contract between the parties.

Termination of mandate under Section 29A(4) of the Arbitration Act is only conditional on the non-filing of an extension application [*M/s Ajay Protech Pvt. Ltd. vs. General Manager & Anr.*, 2024 INS 889]

An application for extension can be filed either before or after the termination of the Tribunal's mandate upon expiry of the statutory and extendable period. The SC further opined that the decision to extend the time is an exercise of discretion by the court and must be done on sufficient cause being shown, and on such terms and conditions that the court deems fit. The SC revisited the core aims of the alternative dispute resolution process while stating that 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution.

Seat Of Arbitration Not Determined by Formulaic & Unpredictable Application [*Arif Azim Co. Ltd. vs. Micromax Informatics FZE*, 2024 SCC OnLine SC 3212]

The Court revisited the evolution of Indian arbitration law, distinguishing the pre-BALCO doctrine of concurrent jurisdiction from the post-BALCO position, where foreign-seated arbitrations exclude the applicability of Part I of the Act. Citing *Bharat Aluminium Co. v. Kaiser Aluminium* [2012 9 SCC 552] and *Union of India v. Reliance Industries* [2015 10 SCC 213], the Court reaffirmed that for arbitration agreements executed after BALCO, Indian courts lack jurisdiction over arbitrations seated outside India, unless expressly provided otherwise in the agreement. The Court applied the Closest Connection Test and the Shashoua Principle, holding that the express designation of Dubai as the venue, coupled with the choice of UAE arbitration rules, indicated that Dubai was the seat. The Court also invoked the doctrine of forum non conveniens to conclude that the most appropriate forum for dispute resolution was Dubai.

Procedural orders passed by arbitral tribunals do not constitute interim awards unless they conclusively decide the substantive rights of parties [*Coslight Infra Company Pvt. Ltd. vs. Concept Engineers & Ors.*, O.M.P. (COMM) 335/2023]

The Court observed that an order refusing impleadment does not settle substantive disputes and, thus, does not qualify as an arbitral award under Section 31(6) of the Act. The Court emphasized that a specific issue regarding the necessity of impleading Rajesh Kumar Srivastava had already been framed for adjudication by the tribunal. Accordingly, the Section 34 petitions were dismissed and the Court declined to interfere with the tribunal's procedural discretion, holding that the dismissal of the impleadment application did not constitute an interim award subject to challenge under Section 34 of the Act. It reaffirmed that arbitral proceedings must respect procedural integrity and that challenges to procedural orders should not impede arbitration progress.

Section 14 of the Limitation Act, 1963, is applicable to the Arbitration and Conciliation Act, 1996 [*Kirpal Singh vs. Government of India*, 2024 INSC 944]

Limitation Act under Section 14 permits the exclusion of time spent in an incorrect forum pursuing bona fide proceedings from the limitation period. The Supreme Court emphasised the need to interpret the Limitation Act liberally, specifically considering the restricted time allowed to challenge arbitral awards below Sections 34 and 37 of the Arbitration Act. In this case, the appellant first filed an appeal in the High Court (wrong forum) and later filed in the suitable forum (District Court), which was rejected as time-barred. The Supreme Court held that the time spent with the wrong forum ought to be excluded.

Arbitration Clause is not Optional; Requires Pragmatic Interpretation [*Tarun Dhameja vs. Sunil Dhameja & Anr.*, 2024 INSC 973]

The Supreme Court held that there cannot be an 'optional' arbitration where parties are required to agree to invoke the arbitration clause mutually. Setting aside the Madhya Pradesh High Court's decision, the Court ruled that arbitration is not optional in practice. The arbitration clause should not be narrowly interpreted, and while the appointment of an arbitrator may require mutual consent, the invocation of the arbitration clause itself is not optional. The clause is supposed to resolve disputes, or even if the parties cannot agree on the arbitrator, the Court can appoint one under Section 11(6) of the Arbitration and Conciliation Act, 1996. Arbitration clauses ought to be examined practically.

Arbitral Tribunal Retains Limited Jurisdiction for Clarification Post Award [*North Delhi Municipal Corporation vs. M/S. S.A. Builders Ltd.*, 2025 INSC 144]

The Supreme Court observed that even after an Arbitral Tribunal becomes functus officio (completion of its function) post-award, it retains limited jurisdiction to clarify or correct errors under Section 33 of the Arbitration and Conciliation Act, 1996. The court upheld the Delhi High Court's decision, allowing the respondent to seek clarification on post-award interest calculations. The Court confirmed that such clarifications fall within the ambit of Section 33(1) of the Act and overruled the appellant's contention that the tribunal lacked jurisdiction to issue the clarification after becoming functus officio.



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